

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:RFP:CHI:2:TL-N-2839-99
JELamartine

date:

to: Patricia Johnson, Team Coordinator, LMSB Group 1531

from: JAN E. LAMARTINE
Attorney

subject: Forms 872 for [REDACTED] and [REDACTED]
[REDACTED]
EIN: [REDACTED]

DISCLOSURE STATEMENT

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Issue

(1) Who is the proper party to execute Forms 872 for [REDACTED] (E.I.N. [REDACTED]) for the tax year [REDACTED]. (2) Who is the proper party to execute Forms 872 for [REDACTED] (E.I.N. [REDACTED]) for the tax year [REDACTED]?

Conclusion

Since the former common parent, [REDACTED], formerly [REDACTED], formerly [REDACTED], continues to exist even though it is no longer the common parent of the consolidated group, it remains the agent for the group with regard to the years it was the common parent of the group. Treas. Reg. §§ 1.1502-77(a) and 1.1502-77T(a). Therefore, it is the proper party to execute the Form 872 for the [REDACTED] and [REDACTED] tax years. The following is a summary of the relevant facts surrounding the corporate transactions.

Facts

During [REDACTED] and [REDACTED], the taxpayer, currently known as [REDACTED], was a wholly owned subsidiary of [REDACTED], a Canadian corporation. [REDACTED], formerly [REDACTED], was the common U.S. parent for the consolidated group for [REDACTED] and [REDACTED]. The taxpayer filed its [REDACTED] return under the name of [REDACTED] (EIN [REDACTED]) and filed its [REDACTED] return under the name of [REDACTED] (EIN [REDACTED]). In [REDACTED], [REDACTED] changed its name to [REDACTED]. Both of the name changes were purely changes in the names (i.e., no mergers, acquisition or reorganization occurred).

In [REDACTED], [REDACTED], the Canadian parent, reorganized by contributing all of the stock of the taxpayer to a newly formed subsidiary, [REDACTED]. As a result, [REDACTED] became the new common U.S. parent. The taxpayer continued to exist as a separate corporation, a wholly owned subsidiary of the new holding company, however, it was no longer the common U.S. parent. [REDACTED] filed the [REDACTED] return as the consolidated parent under its new EIN: [REDACTED].

Discussion

Treas. Reg. §1.1502-77(a) provides that the common parent is the agent for a consolidated group with respect to nearly all procedural tax matters relating to the group's tax liability for a consolidated return year. This agency continues for as long as the parent remains in existence. Treas. Reg. §1.1502-77(a); Craigie, Inc. v. Commissioner, 84 T.C. 466 (1985); Southern Pacific Co. v. Commissioner, 84 T.C. 395 (1985).

Treas. Reg. §1.1502-77T also applies to situations where a group continues to exist following a transaction described in §1.1502-75(d) (such as a group structure change), in which a new common parent has replaced the former common parent. See Interlake Corp. v. Commissioner, 112 T.C. 103 (1999); Union Oil Co. v. Commissioner, 101 T.C. 130 (1993); Southern Pacific Co. v. Commissioner, 84 T.C. 395 (1985). In the situation where the corporation that was the common parent ceases to be the common parent, Temp. Treas. Reg. §1.1502-77T(a)(4)(i) provides that it shall be the alternative agent for a consolidated group as long as it remains in existence. This only for purposes of mailing notices of deficiency and waiving periods of limitations. Temp. Treas. Reg. §§1.1502-77T(a)(2), (a)(3).

Therefore, under both Temp. Treas. Reg. §1.1502-77T(a)(i) and Treas Reg. §1.1502-75(d), [REDACTED] is deemed the alternative agent for members of its consolidated group with regard to the group's [REDACTED] and [REDACTED] taxable years. First, the common parent, [REDACTED] formerly [REDACTED], formerly [REDACTED], remains in existence since a mere name change does not alter the existence of a corporation for purposes of signing a consent. [REDACTED] did not cease to exist since it continued to operate under the name, [REDACTED]. Thus, the former common parent remains in existence.

Second, since the consolidated group for which [REDACTED] was the common parent remains in existence, under Treas. Reg. 1.1502-75(d)(3), [REDACTED] remains the agent to sign the Form 872 with regard to the [REDACTED] and [REDACTED] tax years. The transaction involved a stock exchange. [REDACTED] acquired the stock of [REDACTED] in exchange for stock of [REDACTED]. As a result, [REDACTED] stockholders owned more than [REDACTED] percent of the fair market value of the outstanding stock of [REDACTED], and the group for which [REDACTED] was the common parent shall be treated as remaining in existence under Treas. Reg. § 1.1502-75(d)(3). Although [REDACTED] is no longer the common parent, it is still deemed to be an alternative agent for giving waivers of the statute of limitations for the consolidated group during the tax years [REDACTED] and [REDACTED] under Temp. Reg. §1.1502-77T and Treas. Reg. §1.1502-75(d)(3).

Accordingly, [REDACTED] remains the proper corporate entity to extend the limitations period on behalf of the members of its consolidated group for the

tax years [REDACTED] and [REDACTED].

We recommend that the caption of the Form 872 should read as follows: (Top of Form 872) [REDACTED] (EIN [REDACTED]) (formerly [REDACTED]) (formerly [REDACTED]) *

On the front of the Form 872 the asterisk should refer to the following: *This is respect to the consolidated tax of [REDACTED] (EIN [REDACTED]) [REDACTED] group for the taxable year [REDACTED] and the consolidated tax of [REDACTED] (EIN [REDACTED]) [REDACTED] group for the taxable year [REDACTED].

In addition, the signature block on page 2 of the Form 872 should be signed as follows: [REDACTED] The Form 872 should be signed by a current officer of [REDACTED].

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